



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 360

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H.P. 286

House of Representatives, February 8, 2011

### An Act To Repeal the Maine Certificate of Need Act of 2002

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative McKANE of Newcastle.  
Cosponsored by Senator SNOWE-MELLO of Androscoggin and  
Representatives: CHASE of Wells, FITTS of Pittsfield, FOSSEL of Alna, MALABY of  
Hancock, RICHARDSON of Warren, Senators: COLLINS of York, McCORMICK of  
Kennebec, WHITTEMORE of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 2 MRSA §101, sub-§1, ¶B**, as enacted by PL 2003, c. 469, Pt. B, §1, is  
3 amended to read:

4 B. Make an annual report to the public assessing the progress toward meeting goals  
5 of the plan and provide any needed updates to the plan; and

6 **Sec. 2. 2 MRSA §101, sub-§1, ¶C**, as enacted by PL 2003, c. 469, Pt. B, §1, is  
7 amended to read:

8 C. Issue an annual statewide health expenditure budget report that must serve as the  
9 basis for establishing priorities within the plan; ~~and~~

10 **Sec. 3. 2 MRSA §101, sub-§1, ¶D**, as amended by PL 2005, c. 369, §1, is  
11 repealed.

12 **Sec. 4. 2 MRSA §102**, as amended by PL 2009, c. 194, §1, is repealed.

13 **Sec. 5. 2 MRSA §103, sub-§3, ¶D**, as enacted by PL 2003, c. 469, Pt. B, §1, is  
14 repealed.

15 **Sec. 6. 2 MRSA §103, sub-§3, ¶F**, as amended by PL 2009, c. 355, §1, is further  
16 amended to read:

17 F. Provide recommendations to help purchasers and providers make decisions that  
18 improve public health and build an affordable, high-quality health care system; and

19 **Sec. 7. 2 MRSA §103, sub-§3, ¶G**, as amended by PL 2009, c. 355, §2, is  
20 repealed.

21 **Sec. 8. 2 MRSA §103, sub-§4**, as enacted by PL 2003, c. 469, Pt. B, §1, is  
22 repealed.

23 **Sec. 9. 2 MRSA §104, sub-§7, ¶C**, as amended by PL 2007, c. 441, §1, is further  
24 amended to read:

25 C. Conducting at least 2 public hearings on the plan ~~and the capital investment fund~~  
26 each biennium;

27 **Sec. 10. 22 MRSA c. 103-A**, as amended, is repealed.

28 **Sec. 11. 22 MRSA §1708, sub-§3, ¶C**, as amended by PL 2001, c. 666, Pt. A, §1  
29 and affected by Pt. E, §1, is further amended to read:

30 C. Are consistent with federal requirements relative to limits on reimbursement  
31 under the federal Social Security Act, Title XIX; and

32 **Sec. 12. 22 MRSA §1708, sub-§3, ¶D**, as corrected by RR 2001, c. 2, Pt. A, §33,  
33 is repealed.

1           **Sec. 13. 22 MRSA §1714-A, sub-§4, ¶C**, as amended by PL 1991, c. 568, §2, is  
2 further amended to read:

3           C. The department shall provide in a letter written notice of the requirements of this  
4 section to the transferee in ~~a letter acknowledging receipt of a request for a certificate~~  
5 ~~of need or waiver of the certificate of need for~~ the case of a nursing home or hospital  
6 transfer or in response to a request for an application for a license to operate a  
7 boarding home.

8           **Sec. 14. 22 MRSA §1715, sub-§1, ¶A**, as corrected by RR 2001, c. 2, Pt. A, §34,  
9 is amended to read:

10           A. Is either a direct provider of major ambulatory service, as defined in section 382,  
11 subsection 8-A, or is or has been required to obtain a certificate of need under former  
12 section 329 or former section 304 or 304-A;

13           **Sec. 15. 22 MRSA §2061, sub-§2**, as corrected by RR 2003, c. 2, §71, is  
14 amended to read:

15           **2. Review.** Each project for a health care facility has been reviewed and approved to  
16 the extent required by the agency of the State that serves as the designated planning  
17 agency of the State ~~or by the Department of Health and Human Services in accordance~~  
18 ~~with the provisions of the Maine Certificate of Need Act of 2002, as amended~~, and is  
19 consistent with the cost containment provisions for health care and health coverage of the  
20 State Health Plan adopted pursuant to Title 2, section 101, subsection 1, paragraph A;

21           **Sec. 16. 24-A MRSA §4203, sub-§1**, as amended by PL 2003, c. 510, Pt. A, §19,  
22 is further amended to read:

23           ~~1. Subject to the Maine Certificate of Need Act of 2002, a~~ A person may apply to  
24 the superintendent for and obtain a certificate of authority to establish, maintain, own,  
25 merge with, organize or operate a health maintenance organization in compliance with  
26 this chapter. A person may not establish, maintain, own, merge with, organize or operate  
27 a health maintenance organization in this State either directly as a division or a line of  
28 business or indirectly through a subsidiary or affiliate, nor sell or offer to sell, or solicit  
29 offers to purchase or receive advance or periodic consideration in conjunction with, a  
30 health maintenance organization without obtaining a certificate of authority under this  
31 chapter.

32           **Sec. 17. 24-A MRSA §4204, sub-§1**, as amended by PL 2003, c. 510, Pt. A, §20  
33 and c. 689, Pt. B, §6, is repealed.

34           **Sec. 18. 24-A MRSA §4204, sub-§2-A**, as amended by PL 2007, c. 466, Pt. D,  
35 §7, is further amended to read:

36           **2-A.** The superintendent shall issue or deny a certificate of authority to any person  
37 filing an application pursuant to section 4203 ~~within 50 business days of receipt of the~~  
38 ~~notice from the Department of Health and Human Services that the applicant has been~~  
39 ~~granted a certificate of need or, if a certificate of need is not required,~~ within 50 business  
40 days of receipt of notice from the Department of Health and Human Services that the

1 applicant is in compliance with the requirements of paragraph B. Issuance of a certificate  
2 of authority ~~shall~~ must be granted upon payment of the application fee prescribed in  
3 section 4220 if the superintendent is satisfied that the following conditions are met.

4 ~~A. The Commissioner of Health and Human Services certifies that the health~~  
5 ~~maintenance organization has received a certificate of need or that a certificate of~~  
6 ~~need is not required pursuant to Title 22, chapter 103-A.~~

7 B. ~~If the~~ The Commissioner of Health and Human Services ~~has determined that a~~  
8 ~~certificate of need is not required,~~ the commissioner makes a determination and  
9 provides a certification to the superintendent that the following requirements have  
10 been met.

11 (4) The health maintenance organization must establish and maintain procedures  
12 to ensure that the health care services provided to enrollees are rendered under  
13 reasonable standards of quality of care consistent with prevailing professionally  
14 recognized standards of medical practice. These procedures must include  
15 mechanisms to ensure availability, accessibility and continuity of care.

16 (5) The health maintenance organization must have an ongoing internal quality  
17 assurance program to monitor and evaluate its health care services including  
18 primary and specialist physician services, ancillary and preventive health care  
19 services across all institutional and noninstitutional settings. The program must  
20 include, at a minimum, the following:

21 (a) A written statement of goals and objectives that emphasizes improved  
22 health outcomes in evaluating the quality of care rendered to enrollees;

23 (b) A written quality assurance plan that describes the following:

24 (i) The health maintenance organization's scope and purpose in quality  
25 assurance;

26 (ii) The organizational structure responsible for quality assurance  
27 activities;

28 (iii) Contractual arrangements, in appropriate instances, for delegation of  
29 quality assurance activities;

30 (iv) Confidentiality policies and procedures;

31 (v) A system of ongoing evaluation activities;

32 (vi) A system of focused evaluation activities;

33 (vii) A system for reviewing and evaluating provider credentials for  
34 acceptance and performing peer review activities; and

35 (viii) Duties and responsibilities of the designated physician supervising  
36 the quality assurance activities;

37 (c) A written statement describing the system of ongoing quality assurance  
38 activities including:

39 (i) Problem assessment, identification, selection and study;

- 1 (ii) Corrective action, monitoring evaluation and reassessment; and  
2 (iii) Interpretation and analysis of patterns of care rendered to individual  
3 patients by individual providers;
- 4 (d) A written statement describing the system of focused quality assurance  
5 activities based on representative samples of the enrolled population that  
6 identifies the method of topic selection, study, data collection, analysis,  
7 interpretation and report format; and
- 8 (e) Written plans for taking appropriate corrective action whenever, as  
9 determined by the quality assurance program, inappropriate or substandard  
10 services have been provided or services that should have been furnished have  
11 not been provided.
- 12 (6) The health maintenance organization shall record proceedings of formal  
13 quality assurance program activities and maintain documentation in a  
14 confidential manner. Quality assurance program minutes must be available to the  
15 Commissioner of Health and Human Services.
- 16 (7) The health maintenance organization shall ensure the use and maintenance of  
17 an adequate patient record system that facilitates documentation and retrieval of  
18 clinical information to permit evaluation by the health maintenance organization  
19 of the continuity and coordination of patient care and the assessment the quality  
20 of health and medical care provided to enrollees.
- 21 (8) Enrollee clinical records must be available to the Commissioner of Health  
22 and Human Services or an authorized designee for examination and review to  
23 ascertain compliance with this section, or as considered necessary by the  
24 Commissioner of Health and Human Services.
- 25 (9) The organization must establish a mechanism for periodic reporting of  
26 quality assurance program activities to the governing body, providers and  
27 appropriate organization staff.
- 28 ~~The Commissioner of Health and Human Services shall make the certification~~  
29 ~~required by this paragraph within 60 days of the date of the written decision that a~~  
30 ~~certificate of need was not required. If the commissioner~~ Commissioner of Health and  
31 Human Services certifies that the health maintenance organization does not meet all  
32 of the requirements of this paragraph, the commissioner shall specify in what respects  
33 the health maintenance organization is deficient.
- 34 C. The health maintenance organization conforms to the definition under section  
35 4202-A, subsection 10.
- 36 D. The health maintenance organization is financially responsible, complies with the  
37 minimum surplus requirements of section 4204-A and, among other factors, can  
38 reasonably be expected to meet its obligations to enrollees and prospective enrollees.
- 39 (1) In a determination of minimum surplus requirements, the following terms  
40 have the following meanings.
- 41 (a) "Admitted assets" means assets recognized by the superintendent  
42 pursuant to section 901-A. For purposes of this chapter, the asset value is

1 that contained in the annual statement of the corporation as of December 31st  
2 of the year preceding the making of the investment or contained in any  
3 audited financial report, as defined in section 221-A, of more current origin.

4 (b) "Reserves" means those reserves held by corporations subject to this  
5 chapter for the protection of subscribers. For purposes of this chapter, the  
6 reserve value is that contained in the annual statement of the corporation as  
7 of December 31st of the preceding year or any audited financial report, as  
8 defined in section 221-A, of more current origin.

9 (2) In making the determination whether the health maintenance organization is  
10 financially responsible, the superintendent may also consider:

11 (a) The financial soundness of the health maintenance organization's  
12 arrangements for health care services and the schedule of charges used;

13 (b) The adequacy of working capital;

14 (c) Any agreement with an insurer, a nonprofit hospital or medical service  
15 corporation, a government or any other organization for insuring or providing  
16 the payment of the cost of health care services or the provision for automatic  
17 applicability of an alternative coverage in the event of discontinuance of the  
18 plan;

19 (d) Any agreement with providers for the provision of health care services  
20 that contains a covenant consistent with subsection 6; and

21 (e) Any arrangements for insurance coverage or an adequate plan for self-  
22 insurance to respond to claims for injuries arising out of the furnishing of  
23 health care services.

24 E. The enrollees are afforded an opportunity to participate in matters of policy and  
25 operation pursuant to section 4206.

26 F. Nothing in the proposed method of operation, as shown by the information  
27 submitted pursuant to section 4203 or by independent investigation, is contrary to the  
28 public interest.

29 G. Any director, officer, employee or partner of a health maintenance organization  
30 who receives, collects, disburses or invests funds in connection with the activities of  
31 that organization ~~shall be~~ is responsible for those funds in a fiduciary relationship to  
32 the organization.

33 H. The health maintenance organization shall maintain in force a fidelity bond or  
34 fidelity insurance on those employees and officers of the health maintenance  
35 organization who have duties as described in paragraph G, in an amount not less than  
36 \$250,000 for each health maintenance organization or a maximum of \$5,000,000 in  
37 aggregate maintained on behalf of health maintenance organizations owned by a  
38 common parent corporation, or such sum as may be prescribed by the superintendent.

39 I. If any agreement, as set forth in paragraph D, subparagraph (2), division (c), is  
40 made by the health maintenance organization, the entity executing the agreement  
41 with the health maintenance organization must demonstrate to the superintendent's  
42 satisfaction that the entity has sufficient unencumbered surplus funds to cover the

1 assured payments under the agreement, otherwise the superintendent shall disallow  
2 the agreement. In considering approval of such an agreement, the superintendent  
3 shall consider the entity's record of earnings for the most recent 3 years, the risk  
4 characteristics of its investments and whether its investments and other assets are  
5 reasonably liquid and available to make payments for health services.

6 K. The health maintenance organization provides a spectrum of providers and  
7 services that meet patient demand.

8 L. The health maintenance organization meets the requirements of section 4303,  
9 subsection 1.

10 M. The health maintenance organization demonstrates a plan for providing services  
11 for rural and underserved populations and for developing relationships with essential  
12 community providers within the area of the proposed certificate. The health  
13 maintenance organization must make an annual report to the superintendent regarding  
14 the plan.

15 N. Beginning July 1, 1995, a health maintenance organization that offers coverage to  
16 groups in the State shall offer coverage for purchase by individuals.

17 O. Each health maintenance organization shall provide basic health care services.

18 The applicant shall furnish, upon request of the superintendent, any information  
19 necessary to make any determination required pursuant to this subsection.

20 **Sec. 19. 24-A MRSA §4225**, as amended by PL 1975, c. 293, §4 and enacted by  
21 c. 503 and amended by PL 2003, c. 689, Pt. B, §7, is further amended to read:

22 **§4225. Commissioner of Health and Human Service's authority to contract**

23 The Commissioner of Health and Human Services, in carrying out ~~his~~ the  
24 commissioner's obligations under sections 4204, ~~subsection 1, paragraph B,~~ 4215 and  
25 4216, subsection 1, may contract with qualified persons to make recommendations  
26 concerning the determinations required to be made by ~~him~~ the commissioner. Such  
27 recommendations may be accepted in full or in part by the Commissioner of Health and  
28 Human Services.

29 **Sec. 20. 24-A MRSA §6203, sub-§1, ¶A**, as amended by PL 2003, c. 510, Pt. A,  
30 §22, is further amended to read:

31 A. The provider has ~~submitted to the department an application for a certificate of~~  
32 ~~need, if required under Title 22, section 329, and the department has submitted a~~  
33 ~~preliminary report of a recommendation for approval of a certificate of need and the~~  
34 ~~provider has~~ applied for any ~~other~~ licenses or permits required prior to operation.

35 **Sec. 21. 24-A MRSA §6203, sub-§1, ¶G**, as enacted by PL 1995, c. 452, §11, is  
36 amended to read:

37 G. The department has approved the adequacy of all services proposed under the  
38 continuing care agreement not otherwise reviewed ~~under the certificate of need~~  
39 ~~process~~.

1           **Sec. 22. 24-A MRSA §6203, sub-§2**, as amended by PL 1995, c. 452, §§12 to  
2 16, is further amended to read:

3           **2. Final certificate of authority.** The superintendent shall issue a final certificate of  
4 authority, subject to annual renewal, when:

5           A. The provider has obtained any required ~~certificate of need or other~~ permits or  
6 licenses required prior to construction of the facility;

7           C. The superintendent is satisfied that the provider has demonstrated that it is  
8 financially responsible and ~~shall~~ may reasonably be expected to meet its obligations  
9 to subscribers or prospective subscribers;

10          D. The superintendent has determined that the provider's continuing care agreement  
11 meets the requirements of section 6206, subsection 3; and the rules ~~promulgated~~  
12 adopted in this chapter; and

13          G. The provider certifies to the superintendent either:

14               (1) That preliminary continuing care agreements have been entered and deposits  
15 of not less than 10% of the entrance fee have been received either:

16                       (a) From subscribers with respect to 70% of the residential units, including  
17 names and addresses of the subscribers, for which entrance fees will be  
18 charged; or

19                       (b) From subscribers with respect to 70% of the total entrance fees due or  
20 expected at full occupancy of the community; or

21               (2) That preliminary continuing care agreements have been entered and deposits  
22 of not less than 25% of the entrance fee received from either:

23                       (a) Subscribers with respect to 60% of the residential units, including names  
24 and addresses of the subscribers, for which entrance fees will be charged; or

25                       (b) Subscribers with respect to 60% of the total entrance fees due or expected  
26 at full occupancy of the community.

27          Within 120 days after determining that the application to the superintendent and the  
28 department is complete, the superintendent shall issue or deny a final certificate of  
29 authority to the provider, ~~unless a certificate of need is required, in which case the final~~  
30 ~~certificate of authority shall be issued or denied in accordance with the certificate of need~~  
31 ~~schedule.~~

32           **Sec. 23. 24-A MRSA §6203, sub-§6**, as amended by PL 2003, c. 155, §1, is  
33 further amended to read:

34           **6. Provision of services to nonresidents.** The final certificate of authority must  
35 state whether any skilled nursing facility that is part of a life-care community or a  
36 continuing care retirement community may provide services to persons who have not  
37 been bona fide residents of the community prior to admission to the skilled nursing  
38 facility. If the life-care community or the continuing care retirement community admits  
39 to its skilled nursing facility only persons who have been bona fide residents of the  
40 community prior to admission to the skilled nursing facility, then the community is

1 exempt from the provisions of Title 22, chapter 103-A, but is subject to the licensing  
2 provisions of Title 22, chapter 405; and is entitled to only one skilled nursing facility bed  
3 for every 4 residential units in the community. Any community exempted under ~~Title 22,~~  
4 ~~chapter 103-A~~ rules adopted by the department may admit nonresidents of the community  
5 to its skilled nursing facility only during the first 3 years of operation. For purposes of  
6 this subsection, a "bona fide resident" means a person who has been a resident of the  
7 community for a period of not less than 180 consecutive days immediately preceding  
8 admission to the nursing facility or has been a resident of the community for less than 180  
9 consecutive days but who has been medically admitted to the nursing facility resulting  
10 from an illness or accident that occurred subsequent to residence in the community. Any  
11 community exempted under ~~Title 22, chapter 103-A~~ rules adopted by the department is  
12 not entitled to and may not seek any reimbursement or financial assistance under the  
13 MaineCare program from any state or federal agency and, as a consequence, that  
14 community must continue to provide nursing facility services to any person who has been  
15 admitted to the facility.

16 Notwithstanding this subsection, a life-care community that holds a final certificate of  
17 authority from the superintendent and that was operational on November 18, 2002 and  
18 that is barred from seeking reimbursement or financial assistance under the MaineCare  
19 program from a state or federal agency may continue to admit nonresidents of the  
20 community to its skilled nursing facility after its first 3 years of operation with the  
21 approval of the superintendent. A life-care community that admits nonresidents to its  
22 skilled nursing facility as permitted under this subsection may continue to admit  
23 nonresidents after its first 3 years of operation only for such period as approved by the  
24 superintendent after the superintendent's consideration of the financial impact on the life-  
25 care community and the impact on the contractual rights of subscribers of the community.

26 **Sec. 24. 24-A MRSA §6226**, as amended by PL 2003, c. 510, Pt. A, §23, is  
27 repealed.

28 **Sec. 25. 24-A MRSA §6951, sub-§6**, as enacted by PL 2003, c. 469, Pt. A, §8, is  
29 amended to read:

30 **6. Technology assessment.** The forum shall conduct technology assessment reviews  
31 to guide the use and distribution of new technologies in this State. ~~The forum shall make~~  
32 ~~recommendations to the certificate of need program under Title 22, chapter 103-A.~~

33 **Sec. 26. 34-A MRSA §1803, sub-§4**, as amended by PL 2009, c. 391, §14, is  
34 repealed.

35 **Sec. 27. 38 MRSA §1310-X, sub-§4, ¶A**, as amended by PL 2003, c. 551, §17,  
36 is further amended to read:

37 A. A commercial biomedical waste disposal or treatment facility, if at least 51% of  
38 the facility is owned by a licensed hospital or hospitals ~~as defined in Title 22, section~~  
39 ~~328, subsection 14~~ or a group of hospitals that are licensed under Title 22 acting  
40 through a statewide association of Maine hospitals or a wholly owned affiliate of the  
41 association; and

1

## **SUMMARY**

2

Under current law, before introducing additional health care services and procedures in a market area, a person must apply for and receive a certificate of need from the Department of Health and Human Services. This bill eliminates that requirement.

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